



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9910-61-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA”), notice is hereby given of a proposed partial consent decree to address lawsuits filed by the States of New York, Connecticut, Maryland, Oregon, Rhode Island, and Vermont; the Commonwealth of Massachusetts; and Puget Sound Clean Air Agency (collectively “State Plaintiffs”); the American Lung Association, Environmental Defense Fund, Clean Air Council and Environment and Human Health, Inc. (collectively “Environmental Plaintiffs”); and interveners the Hearth, Patio & Barbecue Association (“Association Plaintiff”) in the United States District Court for the District of Columbia: State of New York, et al. v. McCarthy, No. 13-1553 and consolidated case No. 13-1555 (D. D.C.). Plaintiffs each filed a complaint alleging that EPA failed to perform a nondiscretionary duty to review, and, if necessary, revise the new performance standards for new residential wood heaters, at least every eight years. The consent decree would require EPA to sign a notice to take final action by February 3, 2015.

DATES: Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2014-0363, online at www.regulations.gov (EPA’s preferred method); by e-mail to oei.docket@epa.gov; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand

delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Scott Jordan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-7508; fax number (202) 564-5603; email address: jordan.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree.

The proposed consent decree would settle claims by the State and Environmental Plaintiffs in deadline suits alleging that EPA failed to perform a nondiscretionary duty pursuant to section 111(b)(1)(B) of the Act, 42 U.S.C. 7411(b)(1)(B) to review, and, if necessary, revise, the new source performance standards for new residential wood heaters at least once every eight years. The Association Plaintiff has not agreed to settle its claims against EPA and does not join in this Consent Decree. The proposed consent decree would require EPA, by February 3, 2015, to sign a Federal Register notice taking final action with respect to the Wood Heater NSPS Standards, 40 CFR part 60, Subpart AAA, with such modifications as EPA deems appropriate under CAA section 111(b)(1)(B), 42 U.S.C. 7411(b)(1)(B). Under the proposed consent decree, once EPA has met its obligations, and the parties have resolved any claims for litigation costs, the State and Environmental Plaintiffs and EPA agree that this consent decree shall constitute a complete and final settlement of all claims that the State and Environmental Plaintiffs asserted

against EPA, in State of New York, et al. v. EPA, Case No. 1:13-cv-1553-GK (and consolidated case).

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional information about commenting on the proposed consent decree.

A. How Can I Get A Copy Of the Consent Decree?

Direct your comments to the official public docket for this action under Docket ID No. EPA-HQ-OGC-2014-0363 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use the www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public

docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of

the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 30, 2014.

Lorie J. Schmidt,
Associate General Counsel.

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